Datuk Husam bin Musa v The New Straits Times Press (M) Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S-23–24 OF 2010
LEE HENG CHEONG JC
30 AUGUST 2013

Tort — Defamation — Defamatory statements — Publication of article in newspaper — Plaintiff a political figure and member of Malaysian Parliament — Literal and ordinary meaning of statements to general people — Whether could arouse suspicion and low opinion on credibility and integrity of plaintiff — Whether statements exposed plaintiff to hatred, ridicule, contempt and negative perception that lowered plaintiff in estimation of reasonable man — Whether words defamatory — Whether defence of qualified privilege made out — Whether words published on matter of public interest with responsible journalism

The plaintiff, a political figure who was a member of the Malaysian Parliament, filed a defamation suit against the defendants following a publication in the first defendant's newspaper with the heading 'Husam: They go or I'll quit, Nik Aziz won't allow blue-eyed boy to resign if he wishes' ('the said newspaper article'). The plaintiff claimed that the said impugned passages in the said newspaper article, in their literal and ordinary meaning to the general people, would mean that he, inter alia, was a person who took advantage over other people; was dishonest to his colleagues; fond of quarrelling and conflict; divisive; easily discouraged and was negative and that such imputations could arouse suspicion and low opinion on the credibility and integrity of the plaintiff in public perception. Hence, the plaintiff contended that the impugned passages were defamatory which exposed the plaintiff to hatred, ridicule, contempt and negative perception that lowered the plaintiff in the estimation of a reasonable man. In defence, the defendants contended that the impugned passages were not defamatory but were in fact complimentary to the plaintiff. The defendants also relied on the defence of qualified privilege as it was published in the public interest and that the said newspaper article was published in a fair and reasonable manner. The issues that arose for the court's determination were, inter alia, whether the words in the said newspaper were defamatory; and if yes, whether the defence of qualified privilege had been made out; whether the words were published on a matter of public interest with responsible journalism on the part of the defendants and as such.

Held, dismissing the claim with costs:

(1) The issue of whether the words complained of, in their natural and

ordinary meaning, were defamatory of the plaintiff, was an issue of construction, not evidence. Since the plaintiff relied only on the natural and ordinary meaning as no innuendo was pleaded, the relevant words must be construed in their ordinary and natural meaning.The literal meaning in the words used in the said newspaper article, was that the plaintiff offered to resign his PAS and governmental positions arising from his belief that he was the victim of a conspiracy to remove him from his present positions. The said newspaper article went on to describe in details the Menteri Besar'sresponse which to the court's mind, conveyed a high compliment of the plaintiff's capabilities and his strong position of respect in PAS (see para 16(e)(i)).

(2) From the words used, a reasonable man would understand that the words imputed the highest form of compliment from the highly regarded Menteri Besar and spiritual leader of the party, to the plaintiff, who had a high opinion of and valued the plaintiff immensely and did not want to lose him. The said newspaper article did not have such a tendency to lower the plaintiff's estimation in the eyes of the public and reasonable right thinking members of society. On the contrary, thecourt found that the public or a reasonable reader of the said newspaper article would most probably conclude that the plaintiff was an important man holding high office and commanding the greatest respect from the spiritual leader of the party, himself (see para 16(j)(k)).

(3) The words complained did not bear and were not capable of bearing the meanings or imputations as contended by the plaintiff. Simply put, the words were not defamatory of the plaintiff, when construed objectively in their natural and ordinary meaning. In fact thecourt found that the said newspaper article read as a whole, was a complimentary to the plaintiff as he was reported to be a valuable and important member of the party who had not only an extremely bright future in PAS at the state level and also at the national level. Further that he was smart and the 'blue eye boy' of the Menteri Besar and spiritual leader of the party, himself, who would not allow him to quit (see para 16(o)).

(4) On the issue of the tone and language, the said newspaper article on a political issue, was reported in professional language with no sensationalising and references made to the personalities and sources which they quoted from. Thus this was an obvious indication of responsible journalism.There was no malice whatsoever, on the part of the defendants, in the publication of the said newspaper article and that the plaintiff's contention that the defendants were actuated by malice was without merits and basis. In any event, the onus of proving actual or express malice lies with the plaintiff. From the evidence adduced, the

defendants did not know the plaintiff personally except for the fact that the plaintiff was a well-known political figure and had no axe to grind (see paras 18ab–ac).

[Bahasa Malaysia summary

Plaintif, seorang tokoh politik yang merupakan seorang ahli Parlimen Malaysia, memfailkan saman fitnah terhadap defendan berikutan penerbitan di akhbar defendan pertama dengan tajuk 'Husam: They go or I'll quit, Nik Aziz won't allow blue-eyed boy to resign if he wishes' ('artikel akhbar tersebut'). Plaintif mendakwa bahawa petikan dipersoalkan dalam artikel akhbar berkenaan, dalam maksud yang sebenar dan biasa kepada masyarakat umum, bermakna dia, antara lain, adalah orang yang mengambil kesempatan ke atas orang lain; berlaku khianat kepada rakan-rakannya; gemar kepada pergaduhan dan konflik; memecah belahkan; mudah kecewa dan negatif dan tuduhan seperti itu boleh menimbulkan syak wasangka dan anggapan rendah mengenai kredibiliti dan integriti plaintif kepada persepsi orang ramai. Oleh itu, plaintif mendakwa bahawa petikan tersebut adalah fitnah yang mendedahkan plaintif kepada kebencian, cemuhan, penghinaan dan persepsi negatif yang merendahkan plaintif dalam pandangan orang waras. Dalam pembelaan, defendan menegaskan bahawa petikan itu tidak fitnah tetapi sebenarnya pujian kepada plaintif. Defendan juga bergantung kepada pembelaan perlindungan bersyarat kerana ia telah diterbitkan dalam kepentingan awam dan artikel akhbar itu telah diterbitkan dengan cara yang adil dan munasabah. Isu-isu yang timbul untuk penentuan mahkamah adalah, antara lain, sama ada perkataan dalam akhbar itu adalah fitnah dan jika ya, sama ada mempertahankan hak keistimewaan telah disediakan; sama ada perkataan telah diterbitkan atas sebab kepentingan orang awam dengan kewartawanan yang bertanggungjawab pada pihak defendan dan seperti demikian.

Diputuskan, menolak tuntutan dengan kos:

(1) Isu sama ada perkataan yang diadukan itu, dalam maksud semulajadi dan biasa, tidak memfitnah plaintif, adalah isu pentafsiran, bukannya keterangan. Memandangkan plaintif bergantung hanya pada erti yang semulajadi dan biasa kerana tidak ada sindiran telah dipohon, perkataan yang berkaitan hendaklah ditafsirkan dalam makna biasa dan semulajadi mereka. Maksud literal dalam perkataan yang digunakan dalam artikel akhbar berkenaan, adalah bahawa plaintif menawarkan untuk meletak jawatan PAS dan jawatan kerajaan yang timbul dari kepercayaannya bahawa dia adalah mangsa konspirasi untuk menyingkirkannya dari jawatan sekarang. Artikel akhbar itu menghuraikan secara terperinci tindak balas Menteri Besar yang pada fikiran mahkamah, menyampaikan pujian yang tinggi akan keupayaan plaintif dan kedudukannya yang kukuh yang di dalam PAS (lihat perenggan 16(e)(i)).

(2) Dari kata-kata yang digunakan, orang yang waras akan memahami

bahawa perkataan-perkataan yang dikatakan merupakan bentuk pujian tertinggi dari Menteri Besar yang sangat dihormati dan tokoh agama parti, kepada plaintif, yang mempunyai pendapat yang tinggi terhadap dan amat menghargai plaintif serta tidak mahu kehilangan plaintif. Artikel akhbar itu tidak mempunyai apa-apa kecenderungan untuk merendahkan plaintif pada pandangan orang awam dan masyarakat yang berfikiran munasabah. Sebaliknya, mahkamah mendapati bahawa orang ramai atau pembaca munasabah artikel akhbar itu kebanyakannya mungkin akan membuat kesimpulan bahawa plaintif adalah seorang lelaki yang memegang jawatan penting dan berwibawa yang amat dihormati oleh tokoh agama parti, itu sendiri (lihat perenggan 16(j)(k)).

(3) Perkataan diadukan tidak menanggung dan tidak mampu yang mengandungi makna atau tuduhan seperti dihujah oleh plaintif. Secara ringkas, perkataan itu tidak memfitnah plaintif, apabila ditafsirkan secara objektif dalam maksud semulajadi dan biasa. Malah mahkamah mendapati bahawa artikel akhbar tersebut dibaca secara keseluruhannya, adalah pujian kepada plaintif kerana beliau dilaporkan merupakan seorang ahli yang berharga dan penting dalam parti yang bukan sahaja mempunyai masa depan yang amat cerah di dalam PAS di peringkat negeri dan juga di peringkat kebangsaan. Selanjutnya bahawa dia adalah pintar dan 'blue eye boy' kepada Menteri Besar dan tokoh agama parti, sendiri, yang tidak akan membenarkan dia untuk berhenti (lihat perenggan 16(o)).

(4) Mengenai isu nada dan bahasa, artikel akhbar tersebut pada isu politik, dilaporkan dalam bahasa profesional dengan tidak mensensasikan dan rujukan dibuat untuk personaliti dan sumber yang dipetik oleh mereka. Oleh itu, ini merupakan petunjuk jelas kewartawanan bertanggungjawab. Tidak ada niat jahat sekalipun, di pihak defendan, dalam penerbitan artikel akhbar tersebut dan bahawa hujah plaintif bahawa defendan telah didorong oleh niat jahat adalah tanpa merit dan asas. Dalam apa jua keadaan, beban membuktikan niat jahat sebenar atau nyata terletak pada plaintif. Dari keterangan yang dikemukakan, defendan tidak mengenali plaintif secara peribadi kecuali fakta bahawa plaintif adalah seorang tokoh politik yang terkenal dan tidak memiliki motif tersembunyi (lihat perenggan 18ab–ac).]

Notes

For cases on defamatory statements, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 405–423.

Cases referred to

Adam v Ward [1917] AC 309, HL (refd)
Bonnick v Morris [2002] UKPC 31, PC (refd)

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)
DP Vijandran v Karpal Singh & Ors [2000] 3 MLJ 22; [2000] 6 CLJ 433, HC (refd)
Jameel v Wall Street Journal Europe SPRL [2007] 1 AC 359, HL (folld)
Jones v John Skelton [1963] 1 WLR 1362, PC (folld)
Keluarga Communication v Normala Samsudin [2006] 2 MLJ 700, CA (refd)
Kian Lup Construction v Hong Kong Bank Malaysia Bhd [2002] 7 MLJ 283; [2002] 7 CLJ 32, HC (refd)
Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390, HC (refd)
Perunding Alam Bina Sdn Bhd v Errol Oh & Ors [1999] 6 MLJ 101; [1999] 2 CLJ 875, HL (refd)
Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors [1999] 8 CLJ 499 (folld)
Reynolds v Times Newspaper Ltd and others [2001] 2 AC 127, HL (folld)
Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd [2010] 9 MLJ 320, HC (folld)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173, SC (refd)
Toogood v Spyring (1834) 1 CM & R 81 (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393; [1995] 1 LNS 304, HC (refd)

Legislation referred to

Companies Act 1965
Defamation Act 1957 s 12

Zulkarnain bin Lukman (Nik Muhammad Annuar with him) (Asri Musa & Co) for the plaintiff.
Liew Teck Huat (Lim Qi Si, Goik Kenngee and Wee Jason with him) (TH Liew & Partners) for the defendant.

Lee Heng Cheong JC:

INTRODUCTION

[1] The plaintiff is a well known political figure in Malaysia and was a member of the Malaysian Parliament. He is one of the current three Parti Islam Semalaysia (PAS) Vice Presidents.

[2] The first defendant is a limited company established under the Companies Act 1965 and is the producer and publisher of The *New Straits Times* newspaper named as *New Straits Times* and with an address at 31 Jalan Riong, 59100 Kuala Lumpur.

[3] The second defendant is a Malaysian citizen of full age and was at all material times a journalist of the newspaper *New Straits Times*. She has since left and is now a freelance writer.

[4] The third defendant is a Malaysian citizen of full age and is at all material times a journalist of the newspaper *New Straits Times*.

[5] The fourth defendant is a Malaysian citizen of full age and is at all material times the group editor of the newspaper *New Straits Times*.

[6] The fifth defendant is a Malaysian citizen of full age and is at all material times the group chief editor of the newspaper *New Straits Times*.

[7] The plaintiff has filed a defamation suit against the defendants following a publication in the *New Straits Times* dated 23 November2009 (at p 10 (Prime News)) with the heading, 'Husam: They go or I'll quit, Nik Aziz won't allow blue eyed boy to resign even if he wishes' ('the said newspaper article').

[8] The followings are the impugned passages in the said newspaper article which the plaintiff claimed to be defamatory of him:

(a) it was understood that Husam had stated his intention to relinquish all party and government positions if Menteri Besar Datuk Nik Abdul Aziz bin Nik Mat was suspicious of him;

(b) Nik Aziz, it was learnt had rejected Husam's offer to resign but the Tok Guru's blue-eyed boy then turned around and gave him an ultimatum;

(c) sources close to the Menteri Besar told the *New Straits Times* that Husam, who is also a state executive council member, had told Nik Aziz that he would only stay on if Kelantan Menteri Besar incorporated (PMBK) Chief Executive Officer, Ariffahmi Abdul Rahman and two state executive councillors relinquished their posts;

(d) last Tuesday, Husam met Nik Aziz and he wanted to resign but they got very emotional and both of them cried; and

(e) and since Nik Aziz had asked him to stay on, Husam demanded that Ariffahmi and two executive council members step down, or he would have to go.

('the said impugned passages')

[9] The plaintiff claimed that the said impugned passages in the said newspaper article, in their literal and ordinary meaning to the general people would mean that he was a person who took advantage over other people, he was dishonest to his colleagues, fond of quarreling and conflict, divisive, easily

discouraged in the struggle, giving up, a flip-flop politician, cocky and arrogant and for this purpose was negative that can arouse suspicion and low opinion on the credibility and integrity of the plaintiff in public perception.

[10] The plaintiff herein further contends that the said impugned passages in the said newspaper article in their natural and ordinary meaning are defamatory which expose the plaintiff to hatred, ridicule, contempt and negative perception that lowers the plaintiff in the estimation of a reasonable man.

[11] In defence the defendants contended that the said impugned passages in the said newspaper article were not defamatory of and in fact were complimentary to the plaintiff. The defendants also relied on the defence of qualified privilege as it was published in the public interest and that the said newspaper article was published in a fair and reasonable manner. The defendants also relied on the defence enunciated in the House of Lords' case of *Reynolds v Times Newspaper Ltd and others* [2001] 2 AC 127('*Reynold*'s case').

ISSUES ARISING

[12] Based on the pleadings and the evidence adduced, this court finds that the following issues are pertinent:

(a) whether the words of the said newspaper article in the *New Straits Times* edition of 23 November 2009, are defamatory of the plaintiff?

(b) if the words of the said newspaper article is defamatory of the plaintiff, whether the defence of qualified privilege is made out?

(c) if the words of the said newspaper article complained of, is defamatory of the plaintiff, whether they were published on a matter of public interest with responsible journalism on the part of the defendants and as such, whether the *Reynold*'s public interest/responsible journalism defence is made out?

(d) if the defendants are liable, what should be the quantum of damages that should be made?

THE RELEVANT LAW AND PRACTICE

[13] In *Kian Lup Construction v Hong Kong Bank Malaysia Bhd* [2002] 7 MLJ 283; [2002] 7 CLJ 32, it was held:

In other words, the plaintiff must prove (3) elements of the tort of defamation, which are:

(a) the plaintiff must show that the statement bears defamatory imputations;

(b) the statement must refer to or reflect upon the plaintiffs reputation; and

(c) the statement must have been published to a third person by the defendant.

[14] In *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461, the Appeal Court held at p 375 (MLJ); p 466 (CLJ) as follows:

It cannot, I think, be doubted that the first task of a court, in an action for defamation, is to determine whether the words complained of are capable of being a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v Skelton* [1963] 3 All ER 952 at p 958:

The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: *any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of words* (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151).The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonorable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained or are defamatory. (see *JB Jeyaratnam v Goh Chok Tong* [1985] 3 MLJ 334.) (Emphasis added.)

[15] In *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; [1995] 1 LNS 304, Richard Malanjum J (as he then was) held, inter alia, as follows:

The approach in the construction of the words complained of is to consider the meaning such words would convey to ordinary reasonable using their knowledge and common sense; it is not confined to strict literal meaning of the words but extends to any reference or implication from which persons can reasonably draw (see *Jones v Skelton* [1963] 3 All ER 952; *Kemsley v foot* [1952] 1 All ER 501; *Rajagopal v Rajan* [1972] 1 MLJ 45). It is irrelevant what the publisher intended the words complained of to mean (see *Capital & Counties Bank v Henty* (1882) 7 App Cas 741; *Grubb v Bristol United Press Ltd* [1963] 1 QB 309; *AJA Peter v OG Nio & Ors* [1980]

1 MLJ 226). It is also irrelevant what the readers understood the words complained of to mean for the purpose of deciding their ordinary and natural meaning. (see *JB Jeyaratnam v Goh Chok Tong* [1985] 1 MLJ 334). There is also no necessity for a plaintiff to prove falsity of the words complained of once they are found to be defamatory of him (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142).

As to whether the words complained of in this case were capable of being, and were, in fact, defamatory of the plaintiff, the test to be considered is whether the words complained of were calculated to expose him to exposed him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally (see *JB Jeyaretnam*). Mohamed Azmi J (as he then was) in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 at p 58 said:

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typically type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

Words could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published. The law looks only to its tendency (see *JB Jeyaratnam v Goh Chok Tong*; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor*). (Emphasis added.)

CONSIDERATION OF THE ISSUES ARISING

[16] ISSUE (a) Whether the words in the said newspaper article complained of, in the *New Straits Times* edition of 23 November 2009, are defamatory of the plaintiff?

(a) the plaintiff claimed that said words in the said newspaper article complained of, in their literal and ordinary meaning to the general people would mean that he was a person who took advantage over other people, he was dishonest to his colleagues, fond of quarreling and conflict, divisive, easily discouraged in the struggle, giving up, a flip-flop politician, cocky and arrogant and for this purpose was negative that can arouse suspicion and low opinion on the credibility and integrity of the plaintiff in public perception. The plaintiff further contends that said words complained of, in their natural and ordinary meaning are defamatory which expose the plaintiff to hatred, ridicule, contempt and some other negative perception that lowers the plaintiff in the estimation of a reasonable man;

(b) in particular the plaintiff contends that what is more damaging and defamatory is that the plaintiff, at a meeting, alleged to have given the

Menteri Besar of Kelantan, a choice between him to be retained as an EXCO member or to dismiss Ariff Fahmi as CEO of PMBK and other two councillors and that the plaintiff was also alleged to have cried. The plaintiff contends that it is totally untrue as there was no meeting on Tuesday, 17 November 2009 and for a man to cry is a sign of his weakness which is in total contrast with the character of the plaintiff. These said impugned passages thus has tendency to lower the credibility of the plaintiff in the public perception;

(c) in para 14 of the statement of claim, the plaintiff pleads that the said newspaper article conveys the following meaning or imputations about him:

(i) he is an opportunist who takes the opportunity to put undue pressure on others.

(ii) he is dishonest to his fellow colleagues.

(iii) he enjoys conflicts and fights.

(iv) he is easily disappointed in his battles.

(v) he is quick to quit.

(vi) he is a 'flip flop' politician.

(vii) he finds it hard to listen and accept the true opinions of others.

(viii) he is cocky and arrogant.

(d) It would be pertinent to examine the said newspaper article as a whole, and giving the words therein, their ordinary and natural meaning. This court finds that the following meanings can be gleaned from the said newspaper article:

(a) the plaintiff offered to resign his party and government positions if the Menteri Besar, Datuk Nik Abdul Aziz Nik Mat was suspicious of him;

(b) the plaintiff believed that he was the victim of a conspiracy to remove him from his positions by persons who attempted to create a rift between him and the Menteri Besar. If that were true, the plaintiff decided that he would rather resign than allow the disruption that would result if he stayed;

(c) however, if the plaintiff were to stay, he would want three persons to resign. The first was Ariffahmi Abdul Rahman, the Kelantan Menteri Besar incorporated (PMBK) Chief Officer who was being investigated by the anti-corruption authorities and the other two persons were not named.

(d) the request for the said three resignations of the above three persons

as a condition before he remained in his present positions, was intended to quell differences and conflicts within the PAS party.

(e) the Menteri Besar denied having any such intention and reiterated that he wanted the plaintiff to remain in his present positions. The following words in the said newspaper article are pertinent:

> In Kota Baru, Nik Aziz said *he would not allow Husam to step down because of his capability and wisdom, even if the latter had asked to resign from his post.*
>
> I have not mentioned this before for fear of hurting the feelings of other exco members but *Husam has brought many benefits to Kelantan with his ideas.*
>
> *This boy is smart, has wide experience and is far-sighted. Allah created him not only for Kelantan but for Malaysia. Even if he requested (to resign), I will not allow it,* he said at a press conference yesterday. (Emphasis added.)

(e) The issue of whether the words complained of, in their natural and ordinary meaning, are defamatory of the plaintiff, is an issue of construction, not evidence. Since the plaintiff relies only on the natural and ordinary meaning as no innuendo is pleaded, the relevant words must be construed in their ordinary and natural meaning.

(f) It is trite law that the test to be applied to determine whether the words complained of are defamatory, is an objective one. In *Perunding Alam Bina Sdn Bhd v Errol Oh & Ors* [1999] 6 MLJ 101; [1999] 2 CLJ 875, James Foong J (as he then was) applied the test at p 107 (MLJ); p 880 (CLJ) of the judgment as follows:

> To decide on the issue of imputation, the objective test of the reasonable man with ordinary intelligence, and of general knowledge and experience in worldly affairs would likely to understand the alleged defamatory words without being fettered with strict legal rules of construction, *but may include any implications or inferences, must be used.* (Emphasis added.)

(g) This court is also guided by the Privy Council in *Jones v John Skelton* [1963] 1 WLR 1362 where the Privy Council held, inter alia, as follows:

> The ordinary and natural meaning of words may be either the literal meaning or *it may be an implied or inferred or an indirect meaning*,: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. (Emphasis added.)

(h) It is also necessary to consider the whole of the said newspaper article objectively to determine if the words complained of, are capable of bearing any defamatory meaning. Guidance can be found in *Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors* [1999] 8 CLJ 499, where the court held, inter alia, as follows:

> *I agree that the test to be applied when considering whether a statement is defamatory of a plaintiff is an objective one in that it must be given a meaning in which a reasonable man would understand it* (see *Gatley on Libel and Slander* (9th Ed) para 3.12) and that for this purpose, that is, in considering whether the words complained of contained any defamatory imputation, *it is necessary to consider the whole article*. (Emphasis added.)

(i) Having examined and analysed the literal meaning of the words used in the said newspaper article objectively and reading the said newspaper article as a whole, this court finds that the literal meaning in the words used, is that the plaintiff offered to resign his PAS and governmental positions arising from his belief that he was the victim of a conspiracy to remove him from his present positions. The said newspaper article goes on to describe in details the Menteri Besar's response which in the court's mind, conveys a high compliment of the plaintiff's capabilities and his strong position of respect in PAS.

(j) In this regard, this court finds that from the words used, a reasonable man will understand that the words impute the highest form of compliment from the highly regarded Menteri Besar and spiritual leader of the party, to the plaintiff, who had a high opinion of and valued the plaintiff immensely and did not want to lose him.

(k) As such, this court finds that the said newspaper article did not have such a tendency to lower the plaintiff's estimation in the eyes of the public and reasonable right thinking members of society. On the contrary, this court finds that the public or a reasonable reader of the said newspaper article would most probably conclude that the plaintiff was an important man holding high office and commanding the greatest respect from the spiritual leader of the party, himself.

(l) In *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700, the publisher of the magazine known as *Mingguan Wanita* was sued for defamation. The Court of Appeal held, inter alia, as follows:

> It is our finding that the plaintiff herself noted what the learned trial judge had overlooked in that *when the article was read as a whole, it was complimentary of the plaintiff and could not have borne the meaning as found by the learned trial judge. On this first ground of appeal alone as put forward by the defendant we would have allowed this appeal in that the caption and the words complained of as comprised in the said article are not defamatory of the plaintiff.*
>
> (Emphasis added.)

(m) This court finds that the situation in the above case, is somewhat similar to the situation, in the present case. The said newspaper article, when read as a whole, cannot be said to bear the defamatory meanings as alleged by the plaintiff. The article was in fact more complimentary than defamatory of the plaintiff.

(n) This court notes that even the plaintiff himself confirmed thrice that the said newspaper article is complimentary of him. This is what he said in cross examination:

> Q: Datuk, can I ask you this. I will try. If you look at this article, do you agree with me that the article, the tenor of this article actually is very complimentary of you. You are very important to PAS. This is what this article means.
>
> A: Yes, that is why nobody bother to rebut or issue any denial. *It is compliment to me.*
>
> Q: This is very complimentary of you right?
>
> A: *Yes, compliment to me.*
>
> Q: If you look at that statement that I have just read to you, it is very complimentary of you?
>
> A: *I told you that is correct.* (Emphasis added.)

(o) Thus this court finds that the words complained of in the *New Straits Times* edition of 23 November 2009 do not bear and are not capable of bearing the meanings or imputations as contended by the plaintiff. Simply put, the words are not defamatory of the plaintiff, when construed objectively in their natural and ordinary meaning. In fact this court finds that the said newspaper article read as a whole, is a complimentary to the plaintiff as he is reported to be a valuable and important member of the party who has not only an extremely bright future in PAS at the state level and also at the national level. Further he is smart and the 'blue eye boy' of the Menteri Besar and spiritual leader of the party, himself, who would not allow him to quit.

[17] ISSUE (b) If the words in the said newspaper article are defamatory of the plaintiff, whether the defence of qualified privilege is made out?; and

[18] ISSUE (c) If the words in the said newspaper article complained of, are defamatory of the plaintiff, whether they were published on a matter of public interest with responsible journalism on the part of the defendants and as such, whether the *Reynold*'s public interest/responsible journalism defence is made out?

(a) Notwithstanding that this court have found that the said newspaper article is not defamatory of the plaintiff, this court shall still proceed to consider whether the defendants have established the defence of qualified privilege on the conventional principle and/or the *Reynold*'s principle against the plaintiff's claim.

(b) Section 12 of the Defamation Act 1957 states:

12 Qualified privilege of newspapers

(1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in Part 1 of the Schedule to this Act shall be privileged unless the publication is proved to be made with malice.

(2) Nothing in this section shall be construed as protecting the publication of any blasphemous, seditious or indecent matter or of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(c) In *DP Vijandran v Karpal Singh & Ors* [2000] 3 MLJ 22; [2000] 6 CLJ 433 at pp 50–51 (MLJ); 452-453 (CLJ), the court held, inter alia, that:

> To my mind the second defendant has fallen prey to a popular fallacy. *It has failed to appreciate the fact that there is a real and a very important distinction between 'that which the public is interested in' and 'that which is in the public interest'. Needless to say the first panders to the draw of the public and certainly the courts would not lend their protection to such exercises. The second caters for that which is for the benefit of the public and the courts would certainly extend their protection …* Clearly from the pleadings the second defendant intended to pander to the taste of the public as the defence suggests that the public would be interested in the dispute between the plaintiff and the first defendant. The second defendant is thus precluded now from raising the concept of public interest to support its defence of qualified privilege. (Emphasis added.)

(d) In *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390, the court held, inter alia, that:

> Privilege for publication in the press of information of general public interest is confined to cases where the publisher has a legal, social or moral duty to communicate it to the general public but does not cover information on matters of public interest where there is no such duty to publish.

(e) In *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173, at p 178, the court held, inter alia, that:

> *These occasions are called occasions of qualified privilege. A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty although it contains a incriminatory matter which, without this privilege, would be slanderous and actionable:Harrison v Bush*. The duty may be legal, social or moral, and the person to whom the communication is made must have a corresponding interest or duty to receive it. The reciprocity is essential: *Adam v Ward*. (Emphasis added.)

(f) The plaintiff contends that the defendants fails to prove that it has legal,

social or moral in doing so and also fails to prove that the person to whom the communication is made have corresponding interest or duty to receive it. Therefore, their defence of qualified privilege should fail. The plaintiff further contends that the publication of the said newspaper article was actuated with actual malice.

(g) To be entitled to the benefit of the *Reynold*'s defence, the defendants have to satisfy 10 criteria which the court should consider in determining whether the public was entitled to know. They are:

(i) the seriousness of the allegation;

(ii) the nature of the information, and the extent to which the subject matter in a matter of public concern;

(iii) the source of information;

(iv) steps to verify the story;

(v) the status of the information;

(vi) the urgency of the matter;

(vii) whether comment was sought from the plaintiff;

(viii) whether the article contained the gist of the plaintiff's side of he story;

(ix) the tone of the article; and

(x) the circumstances of publication, including the timing.

(h) The plaintiff contends that the authoress of the said newspaper article, DW2 failed to verify the authenticity of her story for the following reasons:

(i) she merely got a one sided information;

(ii) she failed to verify the story with credible sources such as the office of the plaintiff

(iii) she said that she tried to contact the plaintiff but could not reach him but yet, she continued to write the articles without verification;

(iv) she failed to disclose her so called credible informant that renders hearsay which is not admissible under the law of evidence;

(v) she said she tried to obtain a more balanced report by asking DW1 to attend the Menteri Besar press conference, but what she wrote was in stark contrast as what transpired in the press conference;

(vi) the title of the article is evidently sensational in nature;

(vii) the article was not written based on fact but on speculation; and

(viii) there was no urgency to write such speculation unless it has been verified with the plaintiff himself;

(i) Based on the above, the plaintiff contends that the defendants should not be entitled to the *Reynold*'s defence for they did not fulfill the criteria laid down in the *Reynold*'s case.

(j) This court recognises the importance of the role of media in our society and of protection of the media against libel actions. As to whether the defence of qualified privilege is made out, there is no legal requirement to show that the said newspaper article is true. It is trite that truth is only relevant for the defence of justification. As regards the defence of qualified privilege, if the said newspaper article turned out to be defamatory, the law allows this defence of qualified privilege to be applied in a proper situation. The defence of qualified privilege according to the *Reynolds*' case rests on the duo requirements of public interest and reasonable journalism.

(k) The principle underlying the defence of qualified privilege is the reciprocity of duty/interest between the maker of the statement and the person to whom it is made. For the defence of qualified privilege to be established, there must be a duty on the part of the maker of statement to publish it. There must be a corresponding interest on the part of the person to whom the statement is made, to receive it and the statement is made honestly and in good faith, without malice.

(l) In *Adam v Ward* [1917] AC 309, the court held, inter alia, as follows:

> A privilege occasion is an occasion where the person who makes the communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it.

(m) In *Toogood v Spyring* (1834) 1 CM & R 81, Parke B said, inter alia:

> If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society.

(n) In *Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd* [2010] 9 MLJ 320, the newspaper report there, contains very grave and serious allegations that the plaintiff, being a spiritual faith healer was operating a sexual harem and had raped a young girl. However, the court relied on the doctrine as enunciated in cases such as *Adam v Ward* and applied the qualified privilege defence. The following passage at p 900 of the judgment is instructive.

> The submission has been advanced from time to time the law should recognise the existence of a species of qualified privilege founded upon a duty on the part of the maker of the statement to publish it to the world at large. This received some support from Pearson J in *Webb v Times Publishing Co Ltd* [1960] 1 QB 535 at p 568 and from Cantley J in *London Artist Limited v Littler* [1968] WLR 607 619 but in *Blackshaw v Lord* [1984] QB 1, the Court of Appeal was cautious in accepting it as a general rule while being prepared to acknowledge the existence of occasional exceptions … the germ of the idea of a privilege for reports to a wide range of readers or listeners where the circumstance warrant a finding of sufficient general public interest may however be seen in *Blackshaw v Lord*, a decision which merits more attention than it has hitherto received

(o) In *Sivabalan*'s case, Mohd Zawawi Salleh J (as he then was) further stated, inter alia, as follows:

> the *Reynold*'s privilege was considered and applied by the High Court in the case of *Tan Sri Dato' Tan Kok Ping v The New Straits Times* [2010] 2 MLJ 694; [2010] 3 CLJ 614. For myself, I would hold that this new defence is available to the defendants. I think we need to move with the times and we also need to view the situation with today's eyes. A number of countries with common law traditions comparable to those of Malaysia have moved in recent years to modify the law of defamation to provide greater protection for communication on matters of public interest. The *Reynold*'s privilege represents a reasonable and proportionate response to the need to protect reputation while sustaining the public exchange of information that is vital to modern Malaysian society. It is clear that the law has begun to shift in favour of broader defences for press defendants most prominently in England and Canada but also in Australia.

(p) The *Reynold*'s 'public interest' defence is effectively an extension of the defence of qualified privilege and is based on public interest and responsible journalism which recognised that the media has a duty to disseminate information of public interest. As such, the *Reynold*'s 'public interest' defence, requires the defendant first, to establish that the statement is published on a matter of public interest. Once that is established, the court must consider whether the media acted reasonably in publishing the material (ie responsible journalism). In this regard, the court will consider the various factors, where applicable. *Reynold*'s case explained how reasonableness should be determined as follows:

> Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only. (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. (2) The nature of the information, and the extent to which the subject matter is a matter of public concern. (3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes

A to grind, or are being paid for their stories. (4) The steps taken to verify the information. (5) The status of the information. The information may have already been the subject of an investigation which commands respect. (6) The urgency of the matter. News is often a perishable commodity. (7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. (8) Whether the article contained in the gist of the plaintiff's side of the story. (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. (10) The circumstances of the publication, including the timing.

This list is not exhaustive. The weight to be given to these and any other relevant factors will vary from case to case. Any disputes of primary fact will be a matter for the jury, if there is one. The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge. This is the established practice and seems sound. A balancing operation is better carried out by a judge in a reasoned judgment than by a jury. Over time, a valuable corpus of case law will be built up.

(q) In *Jameel v Wall Street Journal Europe SPRL* [2007] 1 AC 359, the article complained of was clearly defamatory of the plaintiff as it contains insinuations that the plaintiff was somehow involved in funding the Al Qaeda in the September 11 attacks which turned out to be false. However, the House of Lords allowed the newspapers' defence based on the *Reynold*'s principle. Lord Hoffman, speaking for the House of Lords, referred to the case of *Bonnick v Morris* [2002] UKPC 31 and adopted the principle, as follows at p 383:

> Stated shortly, *the Reynold's privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals.* Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved.
>
> Lord Nicholls was speaking in the context of a publication in newspaper but the defence is of course available to anyone who publishes material of public interest in any medium. *The question in each case is whether the defendant behaved fairly and responsibly in gathering and publishing the information.* (Emphasis added.)

(r) As regards the issue of whether the said newspaper article published in the *New Straits Times* edition of 23 November 2009, is an issue of public interest, this court finds that the said newspaper article, is an issue of public interest as politics is a way of life for Malaysians in general and the recent record turnout of voters in the 13th General Elections is instructive of the importance and effect of politics to the lives of the ordinary Malaysian public.

(s) The said newspaper article reported on the plaintiff's threats to relinquish

all party and government positions if the Menteri Besar was suspicious of him. The Menteri Besar, thereafter, in a press conference, responded to this and complimented the plaintiff in his response. The subject matter of the said newspaper article reported on the troubles within PAS which is the ruling party in the state of Kelantan and one of the most prominent opposition parties in Malaysia and the statements from two of the most prominent opposition leaders of PAS. Thus this court finds that the mere fact that the subject matter of the said newspaper article involved these two prominent personalities of PAS, is more than sufficient to inflame public interest, particularly political interest in the public.

(t) There was also the issue of ongoing crisis in PAS's party leadership at that time and this was widely reported in the media. As such, this court finds that, the defendants were merely reporting as a matter of fact, the issue which is of public concern at that time, without malice and in utmost good faith. The media had the right and duty to pick up such important political issues and report the same to the public who has the corresponding right to be informed of such matters.

(u) Further the subject matter of the report is one of particular political interest. PAS is the ruling party in State of the Kelantan and any crisis or problem with its leadership is a matter which the public will have profound interest in knowing. So are the statements from two prominent figures in PAS party and which has held the state of Kelantan for a long time, thus the public interest element was accentuated.

(v) In the light of the above, the defendants, as a responsible and leading media company in Malaysia, had a moral and social duty to publish the report and share it with members of the public. In turn, the members of the public have a corresponding interest to receive the news.

(w) Even the plaintiff accepts that the article in the *New Straits Times* edition of 23 November 2009 was a report on a matter of public interest. In cross-examination, the plaintiff states as follows:

Q: Datuk Husam, do you agree that when it comes to politics, PAS is a major party in Malaysia and they have presence all over the country from Johor to Kelantan to the west side, right?

A: Right.

Q: And PAS has many followers in Malaysia, is that correct? Supporters and followers and even non muslims are followers of PAS.

A: Maybe.

Q: Datuk Husam, and the Chief Minister of Kelantan is the spiritual leader of the party is that correct?

A: Yes.

Q: So, whenever he makes a public statement, it will carry a lot of weight with members of the public especially on political views is that correct?

A: Yes.

Q: *And therefore, when he made the press statement, it is important that the press also picks it up to publish his press statements. Do you agree with that?*

A: *Yes.*

Q: *And anything that involved the top management of the PAS party involving the CM would be a matter where the public is entitled to be informed, do you accept that?*

A: *Yes.*

Q: Because this would be a matter of public interest involving a major political party?

A: As far as it is true, it is correct.

Q: *So, if a reporter attends a press conference given by the CM, then the reporter of course can record what the Chief Minister says and publish it as a report in a newspaper article, do you accept that?*

A: *Yes.*

(Emphasis added.)

(x) In the light of the above, this court finds that the said newspaper article was one of public interest. The subject matter on the face of it, is a matter of public interest involving issues of ongoing crisis in the Kelantan state leadership and prominent personalities. Even the plaintiff himself admits so.

(y) As to the requirement of responsible journalism that is whether the defendants acted reasonably in publishing the report, several factors shall be have to be taken into account in line with the judgment of Lord Nicholls in the *Reynold*'s case.

(z) In *Sivabalan*'s case, Zawawi Salleh J (as he then was) at p 905, referred to the House of Lords case of *Jameel's* and said, inter alia, as follows:

> The House of Lords reversed the judgment of the Court of Appeal and held that the responsible journalism defence applied. It criticised the lower courts for applying the *Reynold*'s factors restrictively as 'a series of hurdles to be negotiated by a publisher' (para 33, per Lord Bingham), rather than as an illustrative guide to what might constitute responsible journalism on the facts of a given case. Given that the defence was meant to foster free expression and a free press, its requirements should not be pitched so high as to make its availability all but illusory. The House of Lords also emphasised that the assessment of responsible journalism is not an invitation for courts to

micro-manage the editorial practices of media organisations. Rather, a degree of deference should be shown to the editorial judgment of the players, particularly professional editors and journalists. For instance, a court should be slow to conclude that the inclusion of a particular defamatory statement was 'unnecessary' and therefore outside the scope of the defence. As Lord Hoffmann put it:

> The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, ex hypothesi, in the public interest, too risky and would discourage investigative reporting (para 51).

(aa) Having the *Reynold*'s case guidelines in mind, this court shall proceed to apply the said guidelines to ascertain whether the defendants practices responsible journalism in the present case.

[i] as regards the factor of the seriousness of the allegation that is when the plaintiff stated his intention to relinquish all party and government positions if the Menteri Besar was suspicious of him. This is a grave and serious statement and therefore warrants media coverage and the defendants were clearly entitled to publish the issue. The said newspaper article reported on the plaintiff's statement and the Menteri Besar's response taken at a press conference and was a balanced report;

[ii] as regards the nature of the information, it concerns the ongoing crisis in the Kelantan state leadership. It is a matter of extreme public interest which no self respecting media company can afford not to report on and to share it with the public;

[iii] as regards the source of the information, this aourt finds that the source came from the plaintiff himself as well as the Menteri Besar's statement in the press conference and the defendants also quoted from an online news portal. These are real and first hand sources and were utilised by the defendants, to prepare the report in the said newspaper article;

[iv] DW1 who is also the third defendant in the present action stated that he attended the Menteri Besar's press conference and recorded what was said which was subsequently reported without him making any changes. As such the report of the spiritual leader of PAS was therefore taken 'from the horse's mouth' as it were and thus a highly reliable source of information for the media to rely and report on;

[v] on the issue of verification, the plaintiff contends that the defendants did not contact him to verify the story. This court also

finds that there was no necessity for the defendants to contact the Menteri Besar because the reporter DW3, was present at the said press conference and reported exactly what was said at the press conference. Thus in these circumstances, it was not necessary for the defendants to have contacted the plaintiff to ask for verification;

[vi] guidance is sought from *Sivabalan*'s case where the journalist there, did not contact the plaintiff to obtain verification on the rape issue. The court, however, held that the journalist had done enough. The court held, inter alia, as follows:

> In deciding this issue, it is well to bear in mind that the ten steps laid down in the *Reynold*'s case for responsible handling of a story, such as checking sources and seeking comment from the subject of an allegation, were examples, not hurdles for the media to get over. *The actual steps taken would be vary with the nature and sources of the Information. In my considered opinion, SD1 took adequate steps which were possible to verify the information. SD1 had good reason to think that the information was reliable; that he himself believed the information to be true and that he had done what he could, in the circumstances of that time, to check it.* (Emphasis added.)

[vii] Similarly, in the present case, this court finds that the defendants did what they could, given the limited time available, to finalise the said newspaper article and more importantly, instructed their correspondent, DW1 to attend the said press conference which was held by the Menteri Besar in order to provide the public with a more balanced report on the issue.

(ab) On the issue of the tone and language of the said newspaper article, this court finds that the said newspaper article on a political issue, was reported in professional language with no sensationalising and references are made to the personalities and sources which they quoted from, in the said newspaper article. Thus this court finds this is an obvious indication of responsible journalism.

(ac) This court finds that there was no malice whatsoever on the part of the defendants, in the publication of the said newspaper article and that the plaintiff's contention that the defendants were actuated by malice is without merits and basis. In any event, the onus of proving actual or express malice lies with the plaintiff. From the evidence adduced, the defendants did not know the plaintiff personally except for the fact that the plaintiff is a well known political figure and had no axe to grind.

(ad) In *Sivabalan*'s case, the court relied on *Bonnick v Morris* at p 915, a decision of the Privy Council on appeal from Jamaica where Lord Nicholls said at para 14 as follows:

> Counsel rightly accepted that malice does not arise as an independent issue. Matters relating to malice are to be considered in the context of deciding whether the publication attracted qualified privilege in accordance with the common law as developed by the decision of the House of Lords in *Reynold's v Times Newspaper Ltd*.

(ae) This court is guided by what Lord Hoffman stated in *Jameel*'s case where he stated that if the defendants have practiced responsible or reasonable journalism, one cannot at the same time say that they are actuated by malice. Lord Hoffman said at p 381 as follows:

> there is no question of privilege being defeated by proof of malice because the propriety of conduct of the defendant is built into the conditions under which the material is privileged

(af) Thus this court finds that the issue of malice is irrelevant for the application of the *Reynold*'s principle in the event this court finds that the defendants practice public interest/responsible journalism.

(ag) In the event this court is wrong in holding that that the issue of malice is irrelevant for the application of the *Reynold*'s principle in the event this court finds that the defendants practices public interest/responsible journalism, this court shall proceed to consider whether there is malice on the part of the defendants. Apart from pleading malice in its statement of claim, this court finds that there is no evidence adduced by the plaintiff to prove that the defendants had acted maliciously in the publication of the article. A perusal of the plaintiffs evidence in chief (ie his witness statement) does not even reveal any allegation or evidence of allegation of malice on the part of the defendants.

(ah) After considered the evidence adduced and the circumstances of this case, this court finds that the defendants have established the defence of qualified privilege both on the conventional principle and the *Reynold*'s principle against the plaintiff's claim herein, in that the subject matter of the said newspaper article is a matter of public interest and that the defendants acted responsibly and reasonably in publishing the said newspaper article.

[19] ISSUE (d) If the defendants are liable, what should be the appropriate award of damages that should be made?

[20] In the light of the court's findings in issue (a), (b) and (c) above, there is no necessity to make a finding in respect of this issue.

ORDER

[21] In the light of my above findings, I find that the plaintiff has failed to

prove its case against the defendants on a balance of probabilities. In the premises this court dismisses the plaintiff's claim with costs.

Claim dismissed with costs.

Reported by Mohamad Noor Afiq